United Nations A/65/779

General Assembly

Distr.: General
11 March 2011

Original: English

Sixty-fifth session
Agenda item 68 (b)
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Note verbale dated 11 March 2011 from the Permanent Mission of Egypt to the United Nations addressed to the Secretary-General

The Permanent Mission of the Arab Republic of Egypt to the United Nations has the honour to enclose herewith a note verbale from 53 Member States addressed to the Secretary-General (see annex) in connection with General Assembly resolution 65/206, entitled "Moratorium on the use of the death penalty", adopted on 21 December 2010 by a recorded vote.

The Permanent Mission of the Arab Republic of Egypt would be grateful if the present note verbale and its annex could be circulated as a document of the General Assembly, under agenda item 68 (b).

11-26164 (E) 160311

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Annex to the note verbale dated 11 March 2011 from the Permanent Mission of Egypt to the United Nations addressed to the Secretary-General

The permanent missions to the United Nations in New York listed below have the honour to refer to General Assembly resolution 65/206, entitled "Moratorium on the use of the death penalty", which was adopted by the Third Committee on 11 November 2010, and subsequently by the General Assembly on 21 December 2010 by a recorded vote. The permanent missions wish to place on record that they are in persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention of existing stipulations under international law, for the following reasons:

(a) There is no international consensus that the death penalty should be abolished. The votes on this resolution at the sixty-fifth session of the General Assembly have once again confirmed this fact, as well as that the issue continues to be a divisive one. Article 6 of the International Covenant on Civil and Political Rights states, inter alia, that "in countries which have not abolished the death penalty, sentences of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime;"

(b) This view was reflected previously in:

(i) The note verbale contained in document A/63/716, in which the co-signing delegations expressed their persistent objection to any attempt to impose a moratorium on the application of the death penalty or its abolition in contravention of existing stipulations under international law, following the adoption of General Assembly resolution 63/168;

(ii) The note verbale contained in document A/62/658, in which the co-signing delegations expressed their persistent objection to any attempt to impose a moratorium on the application of the death penalty or its abolition in contravention of existing stipulations under international law, following the adoption of General Assembly resolution 62/149;

(iii) The joint statement contained in document E/CN.4/2005/G/40, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 2005/59;

(iv) The joint statement contained in document E/CN.4/2004/G/54, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 2004/67;

(v) The joint statement contained in document E/CN.4/2003/G/84 in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 2003/67;

(vi) The joint statement contained in document E/CN.4/2002/198, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 2002/77;

(vii) The joint statement contained in documents E/CN.4/2001/161 and Corr.1, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 2001/68;

(viii) The joint statement contained in document E/CN.4/2000/162, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 2000/65;

(ix) The joint statement contained in document E/1999/113, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 1999/61;

(x) The joint statement contained in documents E/1998/95 and Add.1, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 1998/8;

(xi) The joint letter contained in documents E/CN.4/1998/156 and Add.1, in which the co-signing delegations expressed their reservations prior to the adoption of Commission on Human Rights resolution 1998/8;

(xii) The joint statement contained in document E/1997/106, in which the co-signing delegations disassociated themselves from Commission on Human Rights resolution 1997/12;

(c) In his statement to the plenary of the Rome Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court on 17 July 1998, the President of the Conference declared that the debate at the Conference on the issue of which penalties should be applied by the Court showed that there is no international consensus on the inclusion or non-inclusion of the death penalty, and further that not including the death penalty in the Rome Statute would not in any way have a legal bearing on national legislations and practices with regard to the death penalty, nor should it be considered as influencing, in the development of customary international law or in any other way, the legality of penalties imposed by national systems for serious crimes. Accordingly, the Rome Statute of the International Criminal Court, which is only applicable to States parties, maintains that nothing in part 7 of the Statute affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this part;

(d) Capital punishment has often been characterized by some as a human rights issue in the context of the right to life of the convicted prisoner. However, it is first and foremost an issue of the criminal justice system and an important deterring element vis-à-vis the most serious crimes. It must therefore be viewed from a much broader perspective and weighed against the rights of the victims and the right of the community to live in peace and security;

(e) Every State has an inalienable right to choose its political, economic, social, cultural, legal and criminal justice systems, without interference in any form by another State. Furthermore, the purposes and principles of the Charter of the United Nations, in particular, Article 2, paragraph 7, clearly stipulates that nothing in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. Accordingly, the question of whether to retain or abolish the death penalty, and the types of crimes for which the death penalty is applied, should be determined by each State, taking fully into account the sentiments of its own people, state of crime and criminal policy. On this question, it is improper to attempt to create a universal decision or to prescribe to Member States actions that fall within their domestic jurisdiction, or attempt to

change, by way of a General Assembly resolution, the stipulations under international law that were reached through a comprehensive negotiation process;

(f) Some Member States have voluntarily decided to abolish the death penalty, whereas others have chosen to apply a moratorium on executions. Meanwhile, many Member States also retain the death penalty in their legislations. All Member States are acting in compliance with their international obligations. Each Member State has decided freely, in accordance with its own sovereign right established by the Charter, to determine the path that corresponds to its own social, cultural and legal needs, in order to maintain social security, order and peace. No Member State has the right to impose its standpoint on others.

The permanent missions to the United Nations listed below wish to request the circulation of the present note verbale as a document of the sixty-fifth session of the General Assembly.

New York, 11 March 2011

1. Afghanistan
2. Antigua and Barbuda
3. Bahamas
4. Bahrain
5. Bangladesh
6. Barbados
7. Botswana
8. Brunei Darussalam
9. Central African Republic
10. Chad
11. China
12. Democratic People's Republic of Korea
13. Democratic Republic of the Congo
14. Dominica
15. Egypt
16. Equatorial Guinea
17. Eritrea
18. Ethiopia
19. Grenada
20. Guinea
21. Guyana
22. Indonesia

23. Islamic Republic of Iran
24. Iraq
25. Jamaica
26. Kuwait
27. Lao People's Democratic Republic
28. Libyan Arab Jamahiriya
29. Malaysia
30. Myanmar
31. Niger
32. Nigeria
33. Oman
34. Pakistan
35. Papua New Guinea
36. Qatar
37. Saint Kitts and Nevis
38. Saint Lucia
39. Saint Vincent and the Grenadines
40. Saudi Arabia
41. Sierra Leone
42. Singapore
43. Solomon Islands
44. Somalia
45. Sudan
46. Swaziland
47. Syrian Arab Republic
48. Tonga
49. Trinidad and Tobago
50. Uganda
51. United Arab Emirates
52. Yemen
53. Zimbabwe